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THE PERMANENT COURT OF INTERNATIONAL JUSTICE

Protocol, Statute, and Optional Clause

[In the September-October, 1920, number of the *ADVOCATE OF PEACE* the project for a Permanent Court of Justice was printed in the form in which it went to the Council of the League from the Advisory Committee of Jurists. Herewith is an authoritative copy of the project as finally adopted by the League at the Geneva meeting, December 13, 1920.]

Protocol of Signature

The members of the League of Nations, through the undersigned, duly authorized, declare their acceptance of the adjoined Statute of the Permanent Court of International Justice, which was approved by a unanimous vote of the Assembly of the League on the 13th December, 1920, at Geneva.

Consequently, they hereby declare that they accept the jurisdiction of the court in accordance with the terms and subject to the conditions of the above-mentioned statutes.

The present protocol, which has been drawn up in accordance with the decision taken by the Assembly of the League of Nations on the 13th December, 1920, is subject to ratification. Each power shall send its ratification to the Secretary-General of the League of Nations; the latter shall take the necessary steps to notify such ratification to the other signatory powers. The ratification shall be deposited in the archives of the Secretariat of the League of Nations.

The said protocol shall remain open for signature by the members of the League of Nations and by the States mentioned in the Annex to the Covenant of the League.

The statute of the court shall come into force as provided in the above-mentioned decision.

Executed at Geneva, in a single copy, the French and English texts of which shall both be authentic.
16th December, 1920.

Optional Clause

The undersigned, being duly authorized, thereto, further declare, on behalf of their government, that, from this date, they accept as compulsory, *ipso facto* and without special convention, the jurisdiction of the court in conformity with Article 36, paragraph 2, of the statute of the court, under the following conditions:

Statute

FOR

THE PERMANENT COURT OF INTERNATIONAL JUSTICE

PROVIDED FOR BY

ARTICLE 14 OF THE COVENANT OF THE LEAGUE OF NATIONS

ARTICLE 1

A Permanent Court of International Justice is hereby established, in accordance with Article 14 of the Covenant of the League of Nations. This Court shall be in addition to the Court of Arbitration organized by the Conventions of The Hague of 1899 and 1907, and to the special Tribunals of Arbitration to which States are always at liberty to submit their disputes for settlement.

CHAPTER I

Organization of the Court

ARTICLE 2

The Permanent Court of International Justice shall be composed of a body of independent judges, elected regardless

of their nationality from amongst persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.

ARTICLE 3

The Court shall consist of fifteen members: eleven judges and four deputy-judges. The number of judges and deputy-judges may hereafter be increased by the Assembly, upon the proposal of the Council of the League of Nations, to a total of fifteen judges and six deputy-judges.

ARTICLE 4

The members of the Court shall be elected by the Assembly and by the Council from a list of persons nominated by the national groups in the Court of Arbitration, in accordance with the following provisions.

In the case of members of the League of Nations not represented in the Permanent Court of Arbitration, the lists of candidates shall be drawn up by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907, for the pacific settlement of international disputes.

ARTICLE 5

At least three months before the date of the election, the Secretary-General of the League of Nations shall address a written request to the members of the Court of Arbitration belonging to the States mentioned in the Annex to the Covenant or to the States which join the League subsequently, and to the persons appointed under paragraph 2 of Article 4, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case must the number of candidates nominated be more than double the number of seats to be filled.

ARTICLE 6

Before making these nominations, each national group is recommended to consult its Highest Court of Justice, its Legal Faculties and Schools of Law, and its National Academies and national sections of International Academies devoted to the study of law.

ARTICLE 7

The Secretary-General of the League of Nations shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12, paragraph 2, these shall be the only persons eligible for appointment.

The Secretary-General shall submit this list to the Assembly and to the Council.

ARTICLE 8

The Assembly and the Council shall proceed independently of one another to elect, firstly the judges, then the deputy-judges.

ARTICLE 9

At every election, the electors shall bear in mind that not only should all the persons appointed as members of the Court possess the qualifications required, but the whole body also should represent the main forms of civilization and the principal legal systems of the world.

ARTICLE 10.

Those candidates who obtain an absolute majority of votes in the Assembly and in the Council shall be considered as elected.

In the event of more than one national of the same member of the League being elected by the votes of both the Assembly and the Council, the eldest of these only shall be considered as elected.

ARTICLE 11

If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second, and, if necessary, a third meeting shall take place.

ARTICLE 12

If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the Assembly and three by the Council, may be formed, at any time, at the request of either the Assembly or the Council, for the purpose of choosing one name for each seat still vacant, to submit to the Assembly and the Council for their respective acceptance.

If the conference is unanimously agreed upon any person who fulfills the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Articles 4 and 5.

If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been appointed shall, within a period to be fixed by the Council, proceed to fill the vacant seats by selection from amongst those candidates who have obtained votes either in the Assembly or in the Council.

In the event of an equality of votes amongst the judges, the eldest judge shall have a casting vote.

ARTICLE 13

The members of the Court shall be elected for nine years. They may be re-elected.

They shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

ARTICLE 14

Vacancies which may occur shall be filled by the same method as that laid down for the first election. A member of the Court elected to replace a member whose period of appointment had not expired will hold the appointment for the remainder of his predecessor's term.

ARTICLE 15

Deputy-judges shall be called upon to sit in the order laid down in a list.

This list shall be prepared by the Court and shall have regard, firstly, to priority of election and, secondly, to age.

ARTICLE 16

The ordinary members of the Court may not exercise any political or administrative function. This provision does not apply to the deputy-judges except when performing their duties on the Court.

Any doubt on this point is settled by the decision of the Court.

ARTICLE 17

No member of the Court can act as agent, counsel, or advocate in any case of an international nature. This provision only applies to the deputy-judges as regards cases in which they are called upon to exercise their functions on the Court.

No member may participate in the decision of any case in which he has previously taken an active part, as agent, counsel, or advocate for one of the contesting parties, or as a member of a national or international Court, or of a Commission of Inquiry, or in any other capacity.

Any doubt on this point is settled by the decision of the Court.

ARTICLE 18

A member of the Court cannot be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.

Formal notification thereof shall be made to the Secretary-General of the League of Nations by the Registrar.

This notification makes the place vacant.

ARTICLE 19

The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

ARTICLE 20

Every member of the Court shall, before taking up his duties, make a solemn declaration in open Court that he will exercise his powers impartially and conscientiously.

ARTICLE 21

The Court shall elect its President and Vice-President for three years; they may be re-elected.

It shall appoint its Registrar.

The duties of Registrar of the Court shall not be deemed incompatible with those of Secretary-General of the Permanent Court of Arbitration.

ARTICLE 22

The seat of the Court shall be established at The Hague. The President and Registrar shall reside at the seat of the Court.

ARTICLE 23

A session of the Court shall be held every year.

Unless otherwise provided by rules of Court, this session shall begin on the 15th of June, and shall continue for so long as may be deemed necessary to finish the cases on the list.

The President may summon an extraordinary session of the Court whenever necessary.

ARTICLE 24

If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.

If the President considers that for some special reason one of the members of the Court should not sit on a particular case, he shall give him notice accordingly.

If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

ARTICLE 25

The full Court shall sit except when it is expressly provided otherwise.

If eleven judges cannot be present, the number shall be made up by calling on deputy-judges to sit.

If, however, eleven judges are not available, a quorum of nine judges shall suffice to constitute the Court.

ARTICLE 26

Labour cases, particularly cases referred to in Part XIII (Labour) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this chamber. In the absence of any such demand, the Court will sit with the number of judges provided for in Article 25. On all occasions the judges will be assisted by four technical assessors sitting with them, but without the right to vote, and chosen with a view to ensuring a just representation of the competing interests.

If there is a national of one only of the parties sitting as a judge in the chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favour of a judge chosen by the other party in accordance with Article 31.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Labour cases" composed of two

persons nominated by each member of the League of Nations and an equivalent number nominated by the Governing Body of the Labour Office. The Governing Body will nominate, as to one half, representatives of the workers, and as to one half, representative of employers from the list referred to in Article 412 of the Treaty of Versailles and the corresponding Articles of the other Treaties of Peace.

In Labour cases the International Labour Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings.

ARTICLE 27

Cases relating to transit and communications, particularly cases referred to in Par. XII (Ports, Waterways, and Railways) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this chamber. In the absence of any such demand, the Court will sit with the number of judges provided for in Article 25. When desired by the parties or decided by the Court, the judges will be assisted by four technical assessors sitting with them, but without the right to vote.

If there is a national of one only of the parties sitting as a judge in the chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favour of a judge chosen by the other party in accordance with Article 31.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Transit and Communications cases" composed of two persons nominated by each member of the League of Nations.

ARTICLE 28

The special chambers provided for in Articles 26 and 27 may, with the consent of the parties to the dispute, sit elsewhere than at The Hague.

ARTICLE 29

With a view to the speedy despatch of business, the Court shall form annually a chamber composed of three judges who, at the request of the contesting parties, may hear and determine cases by summary procedure.

ARTICLE 30

The Court shall frame rules for regulating its procedure. In particular, it shall lay down rules for summary procedure.

ARTICLE 31

Judges of the nationality of each contesting party shall retain their right to sit in the case before the Court.

If the Court includes upon the Bench a judge of the nationality of one of the parties only, the other party may select from among the deputy-judges a judge of its nationality, if there be one. If there should not be one, the party may choose a judge, preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these may proceed to select or choose a judge as provided in the preceding paragraph.

Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point is settled by the decision of the Court.

Judges selected or chosen as laid down in paragraphs 2

and 3 of this Article shall fulfill the conditions required by Articles 2, 16, 17, 20, 24 of this Statute. They shall take part in the decision on an equal footing with their colleagues.

ARTICLE 32

The judges shall receive an annual indemnity to be determined by the Assembly of the League of Nations upon the proposal of the Council. This indemnity must not be decreased during the period of a judge's appointment.

The President shall receive a special grant for his period of office, to be fixed in the same way.

The Vice-President, judges, and deputy-judges shall receive a grant for the actual performance of their duties, to be fixed in the same way.

Traveling expenses incurred in the performance of their duties shall be refunded to judges and deputy-judges who do not reside at the seat of the Court.

Grants due to judges selected or chosen as provided in Article 31 shall be determined in the same way.

The salary of the Registrar shall be decided by the Council upon the proposal of the Court.

The Assembly of the League of Nations shall lay down, on the proposal of the Council, a special regulation fixing the conditions under which retiring pensions may be given to the personnel of the Court.

ARTICLE 33

The expenses of the Court shall be borne by the League of Nations, in such a manner as shall be decided by the Assembly upon the proposal of the Council.

CHAPTER II

Competence of the Court

ARTICLE 34

Only States or members of the League of Nations can be parties in cases before the Court.

ARTICLE 35

The Court shall be open to the members of the League and also to States mentioned in the Annex to the Covenant.

The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Council, but in no case shall such provisions place the parties in a position of inequality before the Court.

When a State which is not a member of the League of Nations is a party to a dispute, the Court will fix the amount which that party is to contribute towards the expenses of the Court.

ARTICLE 36

The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in Treaties and Conventions in force.

The members of the League of Nations and the States mentioned in the Annex to the Covenant may, either when signing or ratifying the protocol to which the present Statute is adjoined, or at a later moment, declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning:

(a) The interpretation of a Treaty.

(b) Any question of International Law.

(c) The existence of any fact which, if established, would constitute a breach of an international obligation.

(d) The nature or extent of the reparation to be made for the breach of an international obligation.

The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain members or States, or for a certain time.

In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

ARTICLE 37

When a treaty or convention in force provides for the reference of a matter to a tribunal to be instituted by the League of Nations, the Court will be such tribunal.

ARTICLE 38

The Court shall apply:

1. International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
2. International custom, as evidence of a general practice accepted as law;
3. The general principles of law recognized by civilized nations;
4. Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

CHAPTER III

Procedure

ARTICLE 39

The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment will be delivered in French. If the parties agree that the case shall be conducted in English, the judgment will be delivered in English.

In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court will be given in French and English. In this case the Court will at the same time determine which of the two texts shall be considered as authoritative.

The Court may, at the request of the parties, authorize a language other than French or English to be used.

ARTICLE 40

Cases are brought before the Court, as the case may be, either by the notification of the special agreement, or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting parties must be indicated.

The Registrar shall forthwith communicate the application to all concerned.

He shall also notify the members of the League of Nations through the Secretary-General.

ARTICLE 41

The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to reserve the respective rights of either party.

Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and the Council.

ARTICLE 42

The parties shall be represented by agents.

They may have the assistance of Council or Advocates before the Court.

ARTICLE 43

The procedure shall consist of two parts: written and oral.

The written proceedings shall consist of the communication to the judges and to the parties of cases, counter-cases and, if necessary, replies; also all papers and documents in support.

These communications shall be made through the Registrar, in the order and within the time fixed by the Court.

A certified copy of every document produced by one party shall be communicated to the other party.

The oral proceedings shall consist of the hearing before the Court of witnesses, experts, agents, counsel, and advocates.

ARTICLE 44

For the service of all notices upon persons other than the agents, counsel, and advocates, the Court shall apply direct to the Government of the State upon whose territory the notice has to be served.

The same provisions shall apply whenever steps are to be taken to procure evidence on the spot.

ARTICLE 45

The hearing shall be under the control of the President or, in his absence, of the Vice-President; if both are absent, the senior judge shall preside.

ARTICLE 46

The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.

ARTICLE 47

Minutes shall be made at each hearing, and signed by the Registrar and the President.

These minutes shall be the only authentic record.

ARTICLE 48

The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

ARTICLE 49

The Court may, even before the hearing begins, call upon the agents to produce any document, or to supply any explanations. Formal note shall be taken of any refusal.

ARTICLE 50

The Court may, at any time, entrust any individual, body, bureau, commission or other organization that it may select, with the task of carrying out an enquiry or giving an expert opinion.

ARTICLE 51

During the hearing any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

ARTICLE 52

After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

ARTICLE 53

Whenever one of the parties shall not appear before the Court, or shall fail to defend its case, the other party may call upon the Court to decide in favor of his claim.

The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.

ARTICLE 54

When, subject to the control of the Court, the agents, advocates, and counsel have completed their presentation of the case, the President shall declare the hearing closed.

The Court shall withdraw to consider the judgment.

The deliberations of the Court shall take place in private and remain secret.

ARTICLE 55

All questions shall be decided by a majority of the judges present at the hearing.

In the event of an equality of votes, the President or his deputy shall have a casting vote.

ARTICLE 56

The judgment shall state the reasons on which it is based. It shall contain the names of the judges who have taken part in the decision.

ARTICLE 57

If the judgment does not represent in whole or in part the unanimous opinion of the judges, dissenting judges are entitled to deliver a separate opinion.

ARTICLE 58

The judgment shall be signed by the President and by the Registrar. It shall be read in open Court, due notice having been given to the agents.

ARTICLE 59

The decision of the Court has no binding force except between the parties and in respect of that particular case.

ARTICLE 60

The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

ARTICLE 61

An application for revision of a judgment can be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

The proceedings for revision will be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

The application for revision must be made at latest within six months of the discovery of the new fact.

No application for revision may be made after the lapse of ten years from the date of the sentence.

ARTICLE 62

Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene as a third party.

It will be for the Court to decide upon this request.

ARTICLE 63

Whenever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith.

Every State so notified has the right to intervene in the proceedings; but if it uses the right, the construction given by the judgment will be equally binding upon it.

ARTICLE 64

Unless otherwise decided by the Court, each party shall bear its own costs.

GERMANY'S REPARATION AGREED UPON BY ALLIES

The night before the conference of premiers, sitting as the Supreme Council in Paris, formally agreed upon the amount that Germany is to pay as "reparation" for injuries inflicted during the war, the British Prime Minister dined with friends, including journalists of eminence, and he was in a communicative mood. Mr. James, of the *New York Times*, reports him as saying:

All the allied nations are agreed that Germany must pay her indemnity by exports. All the allied nations are agreed they do not want German exports.

France thinks England should take German exports and enable Germany to pay the reparations with what we would owe. We think France stands much more in need of German exports than we do. And your own Mr. Harding said he was determined on one thing—that Europe should not pay her debts to America by sending goods.

Every nation wants to protect its own industries. Every nation wants to collect its debts. Germany has not gold enough to pay the Allies. The Allies have not gold enough to pay America. And everybody wants to be paid in gold.

To find the answer to this situation is not only the hardest reparation problem, it is the hardest problem of the whole world today.

There is much truth in this diagnosis, and if it is kept in mind it is easier to understand why the Allies have been so dilatory in defining the broad outlines of an issue which, unsettled, has accounted for many post-war complications—military, political, and economic. That Germany must pay something never has been disputed, even by Germans. The *impasse* has arisen because of decided differences between France and Great Britain as to the amount to be paid, the times of payment, and the form in which payment was to be made; and their clashing at times during the diplomatic sparring period has come near wrecking the Entente. Fortunately, with the coming of M. Millerand to the Presidency of France, the tension lessened considerably; and hence, when the Council met at Paris on January 24, the chances for final agreement were better than they would have been had France chosen M. Poincaré as President.

The Council opened with Italy, Belgium, and Japan favorable to the more lenient British policy, and with all the powers profoundly impressed with the fact that adjournment without agreement would be a catastrophe playing directly into Germany's hands and contributing to further economic unsettlement of Europe and Asia. The French Minister of Foreign Affairs, M. Doumer, presented claims that M. Briand could not and did not support and press, so absurdly large were they. Days of discussion and the give-and-take of compromise tactics resulted in an agreement, arrived at on the 28th, the terms of which we publish herewith. The reparations' note bears the title "An agreement between the Allied Powers for the settlement of certain questions relating to the execution of the Treaty of Versailles." It reads:

Article 1

For the purpose of satisfying the obligations imposed upon her by Articles 231 and 232 of the Treaty of Versailles, Germany shall, irrespective of the restitution she is to make under Article 238 or any other obligation under the treaty, pay:

In addition to the payments mentioned above, Germany shall effect restitution in cash of cash taken away, seized, or